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Advocate General's Opinion in Case C-148/22 | Commune d'Ans

According to Advocate General Collins, a public body may, under certain conditions, prohibit its employees from wearing any visible sign of political, religious or philosophical belief in their workplace

Where applied in a general and undifferentiated way, such a rule may be justified by the desire of a municipal authority to put in place an entirely neutral administrative environment

By two individual decisions, a female employee of the municipal authority of Ans (Belgium) was prohibited from wearing the Islamic headscarf in her workplace. In that context, the municipal authority then amended its terms of employment, henceforth requiring its employees to observe strict neutrality, prohibiting any form of proselytising and banning the wearing of overt signs of ideological or religious affiliation. The employee claims that, in doing so, the municipal authority infringes her freedom of religion.

The Labour Court of Liège (Belgium), before which the employee brought proceedings, considers that the prohibition laid down by those terms of employment does not constitute direct discrimination on the grounds of religious or philosophical belief, but seemingly indirect discrimination based on those criteria.

That court is uncertain whether, under the 'anti-discrimination' Directive in the field of employment and occupation,¹ the imposition of 'exclusive and absolute' neutrality on all the employees of a public service, even those who have no direct contact with users of the public service, constitutes a legitimate aim and whether the means used to achieve that aim, that is to say, the prohibition on the wearing of any signs of belief, are appropriate and necessary.

In his Opinion, Advocate General Anthony Collins finds that the Ans municipal authority's terms of employment do indeed fall within the scope of the directive in so far as that directive concerns both the public sector and the private sector, and that a prohibition such as the one at issue comes under the scope of 'employment and working conditions' within the meaning of that directive. He also observes that the concept of 'religion' in that directive covers both the fact of having a belief and the manifestation of religious faith in public, such as a woman wearing the Islamic headscarf.

In his view, the general framework established by the directive leaves a margin of discretion to the Member States which is particularly broad where the principles at stake may involve their national identities. The imposition of restrictions on the freedom of public sector employees to manifest their political, philosophical or religious beliefs in the performance of their duties may be of such importance in some Member States that it forms part of their national identities, inherent in their fundamental structures, political and constitutional.

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Advocate General Collins takes the view that a public body's terms of employment which prohibit employees from wearing any visible sign of political, religious or philosophical belief in the workplace, with the aim of putting in place an entirely neutral administrative environment, **does not constitute direct discrimination** on the grounds of religion or belief, for the purposes of the directive, **provided that that prohibition is applied in a general and undifferentiated way.**

As for the question whether that prohibition constitutes **indirect discrimination**, Advocate General Collins considers that, while it is apparently neutral, it is possible that the prohibition in practice affects a certain category of persons more, such as the municipal authority's employees who observe religious precepts requiring them to wear certain clothing, and in particular female workers who wear a headscarf on account of their Muslim faith, although that point is for the referring court to assess. He adds that **such a difference of treatment would nonetheless not constitute indirect discrimination if it were objectively justified by a legitimate aim and if the means employed to achieve that aim were appropriate and necessary.**

The desire to pursue a policy of political, philosophical and religious neutrality **within a public body** is, in absolute terms, capable of constituting a **legitimate aim**, in particular **for the purpose of respecting the philosophical and religious beliefs of citizens as well as the need to ensure equal and non-discriminatory treatment of users of the public service.**

In addition, the existence of an objective justification for establishing such a distinction relates to the different conceptions of neutrality in Belgium. Advocate General Collins finds that the municipal authority, in adopting the prohibition at issue, deliberately opted for 'exclusive neutrality', with a view to putting in place an 'entirely neutral administrative environment'. He considers that **it is for the municipal authority to demonstrate that that choice responds to a genuine need, and for the Labour Court of Liège to assess**, from two perspectives which are not necessarily cumulative, **whether that demonstration is well-founded.** First, according to Advocate General Collins, the Labour Court of Liège should **take into account the apparent absence of any legislative or constitutional obligation in Belgium requiring employees of a municipal authority to observe exclusive neutrality.** Second, it should be **ascertained whether the facts justify the municipal authority's choice.** In that regard, the fact that the wearing of signs of philosophical or religious belief is unconditionally permitted in other cities of Belgium legitimately raises the question whether the prohibition at issue is appropriate.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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